IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2718 OF 2002

Shaikh Riyasat Ali .. Petitioner

versus

P.O.C.G.I.T.& Anr .. Respondents

Mr.I.A.Sayyed for Petitioner

None for Respondents

CORAM : D.G. KARNIK, J

DATED : 8th August, 2005.

P.C.

1. This writ petition is directed against the judgment and award dated 20th May, 2002 passed by the Central Government Industrial Tribunal No. II, Mumbai answering the reference regarding the termination of service of the petitioner by acceptance of his resignation against the petitioner.

2. The petitioner was employed by the respondent

no. 2. At the relevant time the petitioner was working in the purchase department. On 26th November, 1996 he was transferred from the purchase department to the stores department. Believing that the transfer was an harassment to him on 26th November, 1996 itself the petitioner resigned from the service and tendered a hand written resignation which was accepted. The petitioner challenged the termination of his service by way of acceptance of the resignation by filing a complaint under the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act (for short the MRTU & PULP Act). The complaint was dismissed on the ground that the appropriate authority was the central government and therefore the MRTU & PULP Act was not applicable. Thereafter the petitioner approached the office of the Labour Commissioner, Central Government, who made a reference to the Industrial Tribunal under section 10 of the Industrial Disputes Act (for short the I.D.Act) on the following issue:

> " Whether the action of the management of Central Cottage Industries Corporation of India Ltd. Mumbai by accepting the resignation and terminating the services of the workman Shri Riyasat Ali w.e.f. 26.11.96 is justified or not ? If not, to what relief the workman is entitled ? "

3. After considering the evidence adduced before it and hearing the parties by an order dated 20th May, 2002 the Industrial Tribunal answered the reference against the petitioner holding that action of the respondent no.2 of terminating service of the petitioner by accepting the resignation with effect from 26th November, 1996 was proper. That order is impugned in this petition.

4. It is settled position in law that in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India the findings of fact recorded by the Industrial Tribunal exercising powers under section 10 of the I.D.Act cannot be interfered with unless the findings are shown to be perverse. The scope of the writ petition is therefore restricted in finding out whether there is any perversity in the order of the Industrial Tribunal.

5. The petitioner was working in the purchase department of the respondent no. 2 on 26th November, 1996. By an office order dated 26th

November, 1996 he was transferred from the purchase department to the stores department. He requested for withdrawal of the transfer order. According to the petitioner he was called in the cabin by Mr T.E.P.Raja, Assistant Manager (Administration), who threatened the petitioner to tender his resignation. Though initially the petitioner refused he was forced to write the resignation on 26th November, 1996. The petitioner examined himself but did not examine any witnesses. On oath he repeated the said allegations and further stated that Mr Raja had a grudge against him and had previously suspended him. He however, did not say what threats were issued by Mr Raja. He did not state what Mr Raja threatened he would do in the event the petitioner did not resign from the service. The respondent examined Mr Raja on oath. Mr Raja denied on oath the allegations made by him. He also denied that he ever threatened the petitioner. No other witnesses were examined by either of the parties. Thus, there was statement made on oath by the petitioner as against the statement on oath made by Mr Raja denying the allegations. The Industrial Court has believed and preferred the oral testimony of Mr Raja over that

of the petitioner. On perusal of the evidence through which my attention was drawn by the learned counsel for the petitioner it cannot be said that the view taken by the Industrial Tribunal is so perverse that no person can reasonably reach such a conclusion. The evidence was only word against a word. The evidence of Mr Raja has been believed and the evidence is not intrinsically unbelievable. No interference is called for in the said finding.

6. Learned counsel for the petitioner states that assuming the resignation was voluntary the resignation should not have been accepted. That was not the reference before the Industrial Tribunal and this point was not urged before the Industrial Tribunal. In the circumstances, the argument cannot be considered at this stage.

7. Petition is without any merit and is hereby dismissed. Rule is discharged but without any order as to costs.

D.G.KARNIK, J